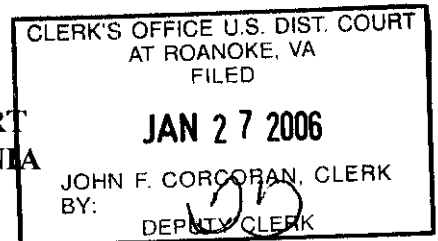


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



ALBERT DONOVAN PEARSON,
Petitioner,

Civil Action No. 7:06cv00045

v.

MEMORANDUM OPINION

UNITED STATES OF AMERICA,
Respondent.

By: Samuel G. Wilson
United States District Judge

Petitioner Albert Donovan Pearson brings this motion to correct his sentence pursuant to 28 U.S.C. § 2255, claiming his 1992 sentence is unconstitutional under United States v. Booker, 543 U.S. 220 (2005). The Supreme Court did not make its decision in Booker retroactively applicable to cases on collateral review. See id. at 769; U.S. v. Johnson, 146 Fed.Appx. 656 (4th Cir. 2005) (one of a series of recent unpublished Fourth Circuit opinions in which the court has explicitly held that the Supreme Court did not make Blakely and Booker retroactive to cases on collateral review). Therefore, Pearson may not raise his Booker claim at this juncture, and the court denies his § 2255 motion.

ENTER: This 27th day of January, 2006.


UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ALBERT DONOVAN PEARSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

) **Civil Action No. 7:06cv00045**
)
)
) **FINAL ORDER**
)
)

) **By: Samuel G. Wilson**
) **United States District Judge**

In accordance with the memorandum opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that the above referenced motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, is **DISMISSED** without prejudice. This matter is **STRICKEN** from the active docket of the court.

Albert Donovan Pearson is advised he may appeal this decision pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure by filing a notice of appeal with this court within 60 days of the entry of this order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk is directed to send certified copies of this Order and the accompanying Memorandum Opinion to all parties.

ENTER: This 27th day of January, 2006.



UNITED STATES DISTRICT JUDGE